IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6151 OF 2004

Mr. N.C. Arun ... Petitioner

Vs.

National Construction Company ... Respondent

Mr. M.S. Pandey for the petitioner.

Mr. Jayan Trivedi for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 14TH MARCH, 2005.

P.C.:-

1. The petitioner is the original defendant/tenant. The respondent/plaintiff filed a suit in the year 2001 for eviction of the defendant from suit premises on the ground of addition and alteration in the suit premises. The defendant did not file his written statement. Therefore, on 4/3/2002, the suit was kept for ex-parte order. On 28/3/2003, the defendant made an application for setting aside the order under which the matter was posted for ex-parte hearing. On 28/3/2003, that application was dismissed. The defendant challenged the said order by preferring the present writ petition. It appears that this writ petition was lodged on 7/10/2003 i.e. after about six months from the date of the impugned order. There is no satisfactory explanation for this delay. Thereafter it was moved on 29/7/2004 for urgent orders i.e. about nine months after lodging of

the petition. I am informed that on 29/7/2004, Justice D.G. Karnik stayed the impugned order. On 21/8/2004, the trial court decreed the suit. The learned counsel for the petitioner-defendant makes a grievance that though this court had stayed the impugned order, the learned trial judge proceeded with the suit and disposed it of.

2. I have been shown the judgment and decree dated 21/8/2004 whereby the suit was decreed. The trial court has observed that when the dictation of the judgment was going on, the learned counsel for the defendant informed that some order was passed by the High Court on 29/7/2004 in Writ Petition No.6451 of 2004, without producing any document. The learned trial judge has observed that the counsel for the defendant did not satisfy the court as to why he did not make an application immediately after the order was passed by the High Court on 29/7/2004 and on the last date i.e. 10/8/2004, when the trial court was very much functioning and the said matter was shown at serial no.1 on the daily board. After so observing, the trial court stayed the execution of the decree till 20/10/2004 obviously for the defendant to adopt such proceedings which he may be advised. I am of the opinion that the trial court cannot be faulted for having passed the impugned order. The defendant was negligent at all stages. If the High Court had stayed the impugned order by its order dated 29/7/2004, then the defendant ought to have pointed out this fact to the trial court immediately and not waited till 21/8/2004 that too till the dictation

of the judgment was started by the trial court. Besides, the suit having been decreed, the present petition challenging the interim order dated 28/3/2003 cannot be entertained at all. The petition is, therefore, rejected. However, the petitioner will be at liberty to challenge the judgment and decree dated 21/8/2004. I have not expressed any opinion on the merits of the defendant's case.

3. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)